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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 138

THE UNITED STATES OF AMERICA, PETITIONER

v.

PETE MCGOWAN, CLAIMANT OF ONE CHEVROLET COUPE, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 35–40) is reported in 16 F. Supp. 453. The opinion of the Circuit Court of Appeals (R. 69–71) is reported in 89 F. (2d) 201.

JURISDICTION

The judgment of the Circuit Court of Appeals (R. 71–72) was entered March 15, 1937. The peti-

tion for writ of certiorari was filed June 14, 1937, and was granted on October 11, 1937 (R. 74). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Reno Indian Colony is "Indian country" within the meaning of the special Indian liquor laws prohibiting the introduction of intoxicating liquors into such country.

STATUTES AND CONSTITUTIONAL PROVISIONS

U. S. C., Title 25, Section 241, prohibiting the introduction of intoxicating liquor into the Indian country; Section 244, penalizing the possession of such liquor therein; Section 246, providing for the seizure and forfeiture of the liquor and certain vehicles, and Section 247, providing for the forfeiture of automobiles and other vehicles used in the introduction of the liquor, are set forth in Appendix A, *infra,* pp. 36–38.

Appendix A also includes the pertinent portions of the Act of June 18, 1934, c. 576, 48 Stat. 984, entitled "An Act To conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations"; etc.

Article I, Section 8 of the Constitution so far as pertinent provides:

> The Congress shall have Power * * *;
>
> * * * * *

> To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; [Clause 3.]
>
> * * * * *
>
> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; * * * [Clause 17.]

Article IV, Section 3, Clause 2 of the Constitution provides:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

STATEMENT

On July 31, 1935, two libels were filed in the District Court of the United States for the District of Nevada for the forfeiture of the two automobiles involved in the above-entitled cause because they were used in the introduction of spirituous liquor into the Indian country, to wit, the Reno

Indian Colony (R. 2–4; 19–21). The claimants answered and petitioned for the return of the automobiles on the grounds, among others, that the place of seizure, to wit, the Reno Indian Colony, was not Indian country; that the special Indian liquor laws did not, therefore, apply to this colony, and that the colony was a part of the State of Nevada and subject, not to the jurisdiction of the United States District Court, but of the State courts (R. 16–18; 31–34).

The two cases were consolidated for trial (R. 35, 46). The District Court made findings of fact and conclusions of law (R. 46–49). There is no dispute as to the pertinent facts. The court's Findings of Fact I–IV were as follows (R. 46–48):

I

That on July 4, 1935, and at all times since Alida C. Bowler has been and now is the duly appointed and acting superintendent of the Reno Indian Colony, Washoe County, State and District of Nevada.

II

That said Reno Indian Colony consists of a tract of land containing 28.38 acres, or thereabouts, and is situated near the easterly city limits, City of Reno, Washoe County, State of Nevada, and between said City of Reno and the City of Sparks, Washoe County, State of Nevada.

III

That some 20 acres of said tract of land comprising said Reno Indian Colony was deeded by deed dated March 8, 1917, by Ione Gould Lewis and John A. Lewis, her husband, as grantors to the United States of America, as grantee, and that the consideration paid to said grantors by the grantee was the sum of Six Thousand ($6,000) Dollars; the said consideration being paid in equal parts from two items contained in the Interior Department appropriation act for the fiscal year 1917 (39 Stat. [1,] 123, 143). The items read as follows:

"For the purpose of procuring home and farm sites, with adequate water rights, and providing agricultural equipment and instruction and other necessary supplies for the non-reservation Indians in the State of Nevada, $15,000: *Provided,* That no part of this appropriation shall be expended for mileage, salaries, or expenses of employees, * * *."

"For the purchase of land and water rights for the Washoe Tribe of Indians, the title to which is to be held in the United States for the benefit of said Indians, $10,000, to be immediately available; for the support and civilization of said Indians, $5,000; in all, $15,000."

IV

That eight and thirty-eight hundredths (8.38) acres or thereabouts of the tract of

land comprising said Reno Indian Colony was deeded by deed dated January 22, 1927, by Lorens M. Christensen and his wife, Marie Christensen, as grantors, to the United States of America, as grantee, and that the consideration paid by the said grantee to the said grantor was Four Thousand One Hundred and Sixty Dollars ($4,160); that said consideration was paid from funds appropriated under Act of May 10, 1926 (Public No. 207), (44 Stat. L., Chapter 278, P. 496) reading as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior be, and he is hereby, authorized to purchase a certain described tract of land containing approximately eight and forty-two hundredths acres, situated in section 7, township 19 north, range 20 east, Mount Diablo meridian, in Nevada; the proper description and area of said tract to be definitely determined by metes and bounds: Provided, That the said land when purchased shall be added to and become a part of the site for the Reno Indian colony heretofore purchased by the Government: Provided, further, That the sum of $4,300 is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, said appropriation, or so much thereof as may be needed, to be used in purchasing the tract of land hereinbefore described."

It was conceded that the State of Nevada never by special Act relinquished jurisdiction over the land in question, nor was any procedure taken to comply with the general law (Nevada Comp. Laws, Sec. 2895) respecting relinquishment of jurisdiction (R. 36).

The Government contended in the District Court that the Reno Indian Colony was in effect an Indian reservation and hence should be regarded as Indian country within the meaning of the special Indian liquor laws (R. 37).

In concluding as a matter of law that the Reno Indian Colony was not Indian country within the meaning of the Federal statutes and that the libels should be dismissed and the property seized restored to its owners (R. 49), the court disagreed with the Government's position, saying in its opinion (R. 39–40):

> As the Indian has advanced in civilization it has apparently been the policy of the Department of Indian Affairs to acquire tracts of land immediately adjacent to cities and towns upon which Indians could reside and have the advantages of closer relations with the white citizens. Indians residing upon such tracts have the advantage of the public school system, and there is also afforded greater opportunity for gainful employment. Such tracts of land have never been regarded as Indian Reservations. Indian Reservations are generally if not universally so designated. To distinguish its

> purpose the tract here in question was designated Reno Indian Colony, and so recognized by that name by Federal statute. Tracts of land acquired and set apart for a particular purpose of Indian welfare are not a reservation, or otherwise to be regarded as Indian country in the sense that expression is used in the statute.

The Government appealed to the Circuit Court of Appeals for the Ninth Circuit (R. 52–54). The claimants, being Indians without funds, did not appear in the appellate court. That court, in affirming the decision of the District Court, held (R. 69–71) that the lands in question could not be regarded as Indian lands from any standpoint; that they were not part of the domain to which any Indian title attached, having been bought by the United States from Mexico pursuant to the Treaty of Guadalupe Hidalgo of 1848 and the United States having thereafter been divested of its title under its public land laws; that the lands had not been set apart or designated exclusively for an Indian tribe; that the lands had been purchased by the United States from private owners without the consent of the legislature of Nevada for a specific purpose, namely, for home and farm sites and water rights for non-reservation Indians in Nevada and for the Washoe Tribe of Indians; that the sovereignty and jurisdiction of Nevada over this land was exc[redacted]e because the operation of its laws did not impair the enjoyment by the United States of

its right to use the lands for the purpose for which purchased; and that for the court to extend the criminal laws of the United States over the sites in question under the guise that they are Indian country would amount to legislation, which is a matter for Congress, by and with the consent of the State legislature.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the Reno Indian Colony is not "Indian country" within the meaning of that term as used in the special Indian liquor laws.

2. In holding that the special Indian liquor laws are not applicable to the Reno Indian Colony.

3. In affirming the decree of the District Court dismissing the libels.

SUMMARY OF ARGUMENT

1. The Reno Indian Colony is Indian country within the purview of the pertinent statutes. The land involved is an Indian reservation even though it has not been so designated in the Acts appropriating the money for its purchase. Even if the land may not be considered as an Indian reservation, it is nevertheless Indian country because it has been set aside exclusively for the use of the Indians as such, under the superintendence of the Government.

The Indians residing in this Colony are as much in need of protection against the prohibited traffic in liquor as are any other Indians, and Congress

has not indicated any intention to withdraw this protection. The attitude of the Federal Government toward the Indian has been from a very early time and still is the attitude of a guardian toward a ward.

2. The Bureau of Indian Affairs has always regarded the Reno Indian Colony and similar Indian colonies as Indian country. Any doubt as to the propriety of this interpretation should be resolved in favor thereof unless clearly arbitrary.

3. The constitutional basis for the application to the Reno Indian Colony of the laws relating to the Indian lands is found in the third and not the seventeenth clause of Section 8, Article 1. A basic error in the reasoning of the Circuit Court of Appeals was its assumption that the Indian liquor laws can have no application to the Reno Indian Colony because the Government acquired the lands in that colony without the consent of the State legislature. Such consent is required only if the Federal Government attempts to exercise exclusive jurisdiction over the land in question, a power not here being asserted.

ARGUMENT

I

A. THE RENO INDIAN COLONY IS INDIAN COUNTRY WITHIN THE PURVIEW OF THE PERTINENT STATUTES

The court below in holding that the Reno Indian Colony is not Indian country premises its decision

upon two considerations: (1) That the lands in the Reno Indian Colony were never part of a domain to which any Indian title attached; and (2) that the lands had not been set apart or designated exclusively for an Indian tribe.

With regard to (2) it is difficult to determine precisely what the court had in mind. If it meant that the lands in question were not set apart or designated exclusively for an Indian tribe as such because they were set apart for non-reservation Indians of Nevada as well as the Washoe Tribe, we submit that this is immaterial because the constitutional power under Article I, Section 8, Clause 3(*supra,* pp. 2–3) to regulate commerce with the Indian tribes is obviously not diminished by the presence on the lands of Indians other than those belonging to the Washoe Tribe. Moreover, the court apparently overlooked the definition of the term "tribe" appearing in Section 19 of the Act of June 18, 1934 (Appendix, *infra,* p. 42), which is a statute permitting the organization for the purpose of their common welfare of Indians who are under the superintendence of the Government. This definition is as follows:

> The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.

As hereinafter indicated (*infra,* p. 27) the Indians in the Reno Indian Colony have been organized under the Act of 1934. In *United States* v. *Sando-*

val, 231 U. S. 28, 46, this Court specifically held that the questions whether, to what extent, and for what time any body of Indians shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress and not by the courts. See also *United States* v. *Chavez,* 290 U. S. 357, 362–363.

If, however, what the Court meant was that, as held by the District Court (R. 39), the Reno Indian Colony was not specifically designated as an Indian reservation, we submit that, as will be later developed, the Colony is, in effect, an Indian reservation but that even if it may not be so considered it is still Indian country within the broad definition given that term by this Court.

As to (1) it was settled by this Court in *Donnelly* v. *United States,* 228 U. S. 243, that the term "Indian country" is not confined to lands to which the Indians retained their original right of possession or to lands previously occupied by them. The Court said (pp. 268–269):

> It is contended for plaintiff in error that the term "Indian country" is confined to lands to which the Indians retain their original right of possession, and is not applicable to those set apart as an Indian reservation out of the public domain, and not previously occupied by the Indians.
>
> Sections 2145 and 2146 are found in Title XXVIII of the Revised Statutes, which title

relates to Indians, and within chap. 4, the sub-title of which is "Government of Indian country." Section after section in that chapter contains provisions of law applicable only to Indian country, and yet the act contains no definition of that term. In the Indian Intercourse Act of June 30, 1834, 4 Stat. 729, c. 161, the first section defined the "Indian country" for the purposes of that act.[1] But this section was not reenacted in the Revised Statutes, and it was therefore repealed by § 5596, Rev. Stat. *Exparte Crow Dog,* 109 U. S. 556, 561; *United States* v. *LeBris,* 121 U. S. 278, 280; *Clairmont* v. *United States,* 225 U. S. 551, 557. Under these decisions the definition as contained in the act of 1834 may still "be referred to in connection with the provisions of its original context that remain in force, and may be considered in connection with the changes which have taken place in our situation, with a view of determining from time to time what must be regarded as Indian country where it is spoken of in the statutes." With reference to country that was formerly subject to the Indian occupancy, the cases cited furnish a criterion for determining what is

[1] This section provides: "That all that part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana, or the territory of Arkansas, and, also, that part of the United States east of the Mississippi river, and not within any state to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country."

> "Indian country." But "the changes which have taken place in our situation" are so numerous and so material, that the term cannot now be confined to land formerly held by the Indians, and to which their title remains unextinguished. And, in our judgment, nothing can more appropriately be deemed "Indian Country," within the meaning of those provisions of the Revised Statutes that relate to the regulation of the Indians and the government of the Indian country, than a tract of land that, being a part of the public domain, is lawfully set apart as an Indian reservation.

This quoted language indicates that the term Indian country has been defined by this Court in such manner as to meet the changing conditions. A chronological review of some of the pertinent decisions illustrates the development of the definition of the term Indian country.

In *Bates* v. *Clark* (1877), 95 U. S. 204, 209, this Court defined the term as "all the country described by the act of 1834 as Indian country remains Indian country so long as the Indians retain their original title to the soil * * *." And in *Ex parte Crow Dog* (1883), 109 U. S. 556, 561, the same definition was propounded with the added description, "within the limits of the United States, even when not within a reservation expressly set apart for the exclusive occupancy of Indians," with exceptions not material here. The definition in the Act of 1834 "may be referred

to in connection with the provisions of its original context which remain in force, and may be considered in connection with the changes which have taken place in our situation, with a view of determining from time to time what must be regarded as Indian country." *Ibid.* Again in *United States* v. *LeBris* (1887), 121 U. S. 278, 280, this Court reiterates its definition of Indian country made in *Ex parte Crow Dog, supra*. However, under conditions considerably changed since its earlier definitions, this Court in *Donnelly* v. *United States* (1913), 228 U. S. 243, 269, defined Indian country as: "A tract of land that, being a part of the public domain, is lawfully set apart as an Indian reservation." Again in the same year this Court was called upon to define the term in the case of *United States* v. *Sandoval* (1913), 231 U. S. 28, 46, 47, and there held Indian country to be: "Distinctly Indian communities" recognized and treated by the Government "as dependent communities entitled to its aid and protection" (in this case Pueblos, the land being held by the Indians in communal ownership of the full title in fee simple). One year later this Court again defined the term in *United States* v. *Pelican* (1914), 232 U. S. 442, 449, *supra,* as lands "validly set apart for the use of the Indians as such, under the superintendence of the Government" (an allotment in trust which remained when the reservation was diminished and much of it restored to the public

domain under Act of Congress). See also *Hallowell* v. *United States,* 221 U. S. 317, 323, in which an inherited trust allotment in the Omaha Indian Reservation was held to be Indian country. The reservation had been allotted practically in whole, and many of the allotments had been sold to white people. In *United States* v. *Ramsey* (1926), 271 U. S. 467, the term Indian country was held applicable to a restricted allotment carved out of the Osage Reservation. The Court approved the definition in the *Pelican* case and (p. 471) quoted therefrom: "The allottees were permitted to enjoy a more secure tenure and provision was made for their ultimate ownership without restrictions. But, meanwhile, the lands remained Indian lands set apart for Indians under governmental care; and we are unable to find ground for the conclusion that they became other than Indian country through the distribution into separable holdings, the Government retaining control." And in its latest pronouncement on the subject, in *United States* v. *Chavez* (1933), 290 U. S. 357, 364, *supra,* Indian country was held to include "any unceded lands owned or occupied by an Indian nation or tribe of Indians" (in this case, pueblos).

In the *Pelican* case, *supra,* this Court said (pp. 449):

> In the present case, the original reservation was Indian Country simply because it had been validly set apart for the use of the

> Indians as such, under the superintendence of the Government.

Although the Reno Indian Colony was not specifically designated as an Indian reservation so as to bring the land in question squarely within the definition as laid down in the *Donnelly* case, *supra,* it is submitted that the land was set aside for the Indians as such, under the superintendence of the Government, and therefore falls squarely within the definition propounded in the *Pelican* case.

Moreover, the cases listed above indicate clearly that the question as to whether lands occupied by the Indians are Indian country does not depend upon the character of the title of either the Government or the Indians, but primarily upon the question whether the Indians occupying such lands are treated by the Government as dependent wards in need of the Government's protection. As was aptly stated in the *Pelican* case, *supra* (p. 450):

> * * * It must be remembered that the fundamental consideration is the protection of a dependent people. As the court said in *United States* v. *Rickert,* 188 U. S. 432, 437, where allotments had been made under the conditions provided by the act of February 8, 1887 (and it was found that the agreement with the Indians, 26 Stat. 1035–1038, did not indicate any different relation of the United States to the allotted lands from that created or recognized by that act): "These Indians are yet wards of the Nation, in a condition

> of pupilage or dependency, and have not been discharged from that condition. They occupy these lands with the consent and authority of the United States; and the holding of them by the United States under the act of 1887, and the agreement of 1889, ratified by the act of 1891, is part of the national policy by which the Indians are to be maintained as well as prepared for assuming the habits of civilized life, and ultimately the privileges of citizenship.

See also *United States* v. *Sandoval, supra* (pp. 45–47; *United States* v. *Chavez, supra* (pp. 362–363).

In the appropriation Act pursuant to which the lands first purchased for the Reno Indian Colony were brought, (*supra,* p. 5), it was provided that the purpose of the appropriation was not only to procure home and farm sites, with adequate water rights, but to provide agricultural equipment and instruction and other necessary supplies for the nonreservation Indians of the State of Nevada. With respect to the land and water rights purchased for the Washoe Tribe of Indians, the title was to be in the United States "for the benefit of said Indians" and an appropriation was made "for the support and civilization of said Indians." It is obvious, therefore, that in acquiring these lands the United States was not only motivated by the desire of furnishing home and farm sites for the Indians, but further recognized their dependent status as wards of the United States by making

provision for the support, instruction, and civilization of these Indians. The special Indian liquor laws are designed for the protection of such wards. It would seem, therefore, that even if the Reno Indian Colony may not be regarded technically as an Indian reservation, it comes within the purview of the term "Indian country" under the comprehensive decisions of this Court construing that term.

In any event, we submit that, although the Reno Indian Colony was not specifically designated as such, it was in effect an Indian reservation. It is well settled that an Indian reservation is Indian country. *Donnelly* v. *United States, supra; Pronovost* v. *United States,* 232 U. S. 487, 489. Not only is it immaterial that such a reservation may have been created from lands not previously occupied by the Indians (*Donnelly* v. *United States, supra*), but it is not essential that there be a formal cession or formal Act setting apart a particular tract. A reservation is in fact created if, from what has been done, a certain tract is held exclusively for Indian occupation. *Minnesota* v. *Hitchcock,* 185 U. S. 373, 390. The title to the lands in the Reno Indian Colony is to be held in the name of the United States and they were acquired by the United States exclusively for the occupation, use, and benefit of the Indians as dependent wards of the Government. This Indian colony would seem to have all the attributes of an Indian reservation,

and there would appear to be no good reason why any distinction with respect to the application of the Indian liquor laws should be made between such a colony and lands specifically designated as an Indian reservation. In order that the purposes for which this colony is maintained may be fully accomplished, it is as necessary to keep liquor from the Indians in this community as from those residing on a designated reservation.

This Court has consistently maintained the guardianship of the Federal Government over dependent Indian communities. *United States* v. *Kagama,* 118 U. S. 375, 383–384; *United States* v. *Nice,* 241 U. S. 591, 597–598. Thus, in *United States* v. *Sandoval,* 231 U. S. 28, where the question was whether the Indian liquor laws applied to the Pueblos of New Mexico and whether the lands were Indian country, it was said (pp. 45–46):

> But it is not necessary to dwell specially upon the legal status of this people under either Spanish or Mexican rule, for whether Indian communities within the limits of the United States may be subjected to its guardianship and protection as dependent wards turns upon other considerations. See *Pollard* v. *Hagan,* 3 How. 212, 225. Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States as a superior and civilized

> nation the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether within or without the limits of a State.

It is apparent, therefore, that this Court has never hesitated to give the term "Indian country" as used in the Federal statutes a broad construction wherever necessary properly to protect dependent Indian wards and communities.

Attention is invited to the fact that the land used for the Reno Indian Colony was purchased in part for "the non-reservation Indians," which is strongly suggestive of a purpose on the part of the Congress to furnish a reservation home for those Indians in the State of Nevada who had none. On that point light may be gained from a letter of March 5, 1926, written by the Secretary of the Interior to Honorable J. W. Harreld, Chairman, Committee on Indian Affairs, United States Senate, which is printed in House Report No. 795, 69th Congress, 1st Session, and which reads as follows:

> MY DEAR SENATOR HARRELD: Further reference is made to your letter inclosing for report a copy of S. 1989, "A bill to authorize the Secretary of the Interior to purchase certain land in Nevada to be added to the present site of the Reno Indian colony, and

authorizing the appropriation of funds therefor."

The present Reno Indian colony site consists of a tract of 20 acres of land purchased by the Government during the year 1917 for the benefit of Indians of the Washoe Tribe and other landless Indians in Nevada. The superintendent reports that the present site has been subdivided into 80 lots, 50 by 140 feet; that 6 of these lots are reserved for a warehouse and a public well, leaving 74 lots that are used as homes for the Indian families, accommodating 265 persons.

The tract of land which it is now proposed to purchase is situated adjacent to the present colony site, being separated therefrom only by a public road. The superintendent further reports that it is particularly desirable that this tract of land be purchased in order that worthy Indian families, especially those where the parents were educated in schools, may establish homes under favorable conditions. He states that there are a number of such young Indian families who have requested lots, but none are available until additional land has been acquired.

The present owner of the desired tract of approximately 8½ acres has given his written consent to sell the land to the Government for $500 per acre, making the total cost approximately $4,300. The superintendent reports that the tract is now set to alfalfa and that the soil is suitable for gardening, being of better quality than the land heretofore purchased for the colony, and in con-

> sideration of the location in close proximity to the city of Reno, he states his opinion that the price quoted is within reasonable market value of the land. Favorable consideration of the bill is respectfully recommended to your committee and the Congress.
>
> The Bureau of the Budget informed this department on February 23, that the proposed appropriation of $4,300 for the purchase of land for these Indians is not in conflict with the financial program of the President.

The additional appropriation requested was made by Congress.

In view of the purpose of protection and nurture indicated in this letter, it cannot be supposed that the Congress intended that this tribe and colony of Indians should be left exposed more than other Indians to the dangers arising from the introduction of intoxicants.

The guardianship of the Federal Government over the Indian dates back to a time prior to the adoption of the Constitution. The status of guardian has been maintained by Congress, and has been closely followed by this Court. *Worcester* v. *Georgia,* 6 Pet. 515, 561; *United States* v. *Joseph,* 94 U. S. 614, 617; *United States* v. *Kagama,* 118 U. S. 375, 383, *et seq.; United States* v. *Thomas,* 151 U. S. 577, 585; *Tiger* v. *Western Investment Co.,* 221 U. S. 286, 315; *United States* v. *Sandoval,* 231 U. S. 28, 39, 45, 46; *United States* v. *Nice,* 241

U. S. 591; *United States* v. *Chavez,* 290 U. S. 357, 362, 364.

This guardianship has called for most serious consideration by the Congress with respect to the traffic in intoxicating liquors with the Indians. This Court, in *United States* v. *Forty-Three Gallons Whiskey,* 108 U. S. 491, said (p. 496):

> The evils resulting from the use of spirituous liquors are so many and so appalling that the government has, from an early period of our history, labored to prevent their introduction among the Indians. In order more effectually to secure this result, laws prescribing severe penalties have been enacted, and authority has been vested in the Indian agents to arrest traffickers in the prohibited article, and to seize and confiscate their property found with it. It would require very clear expressions in any general legislation to authorize the inference that Congress purposed to depart from its long established policy in regard to a matter of so vital importance to the peace and to the material and moral well-being of these wards of the nation.

Viewing these facts, Congress has adopted very strict measures for the Indian's protection. A person who anywhere in the United States sells or gives intoxicants to an Indian under charge of an Indian agent is guilty of a felony. U. S. C. Title 25, Sec. 241. Possession of such liquors within the Indian country is also an offense, and *prima facie*

evidence of unlawful introduction therein. *Id.*, Secs. 244, 245. Such unlawful introduction is likewise a felony. *Id.*, Section 241.

It was upon charges of such introduction that the cases now at bar arose.

So clear and urgent has been the need for the protection of the Indian in regard to the traffic in intoxicants that it has been felt necessary to extend it beyond the lands reserved for their special occupancy to lands to which they may naturally resort outside the reservations; and this prohibition may extend even with respect to lands lying within the bounds of States. These propositions are "thoroughly established." *Johnson* v. *Gearlds,* 234 U. S. 422, 438, 439, and cases cited. The prohibition in this case was based upon the Chippewa Treaty of 1855.

And it has been held that Congress may, when necessary to the proper guardianship of Indians, reimpose the status of Indian country upon lands which have once had but have lost that status. Thus in *Lucas* v. *United States,* 15 F. (2d) 32, 33–34 (C. C. A. 8th), it was said:

> It is well settled, and this is also conceded by plaintiff in error, that Congress has authority to legislate relative to the introduction of liquor into Indian country; that Congress has the right to reserve that authority when it creates a state out of Indian country; or that Congress can by a treaty with the Indians, which cedes a portion of

> Indian country for the formation of a state, make a reservation in such treaty that intoxicating liquor shall not be introduced into such country, even after it has ceased to be Indian country; and that Congress may, when necessary to the proper exercise of its power in respect to the guardianship of Indians, reimpose the status of Indian country upon lands which have once had but have lost that status. See *Browning* v. *United States,* 6 F. (2d) 801 (C. C. A. 8), where the cases are reviewed.

A further element in the promotion of this guardianship is the rule long ago established by this Court that "the legislation of Congress is to be construed in the interest of the Indian." *United States* v. *Celestine,* 215 U. S. 278, 290, quoted in *Tiger* v. *Western Investment Co., supra,* page 315; *United States* v. *Nice, supra,* page 599.

The guardianship of the United States over the Indian may be terminated only by Act of Congress. *United States* v. *Ramsey, supra,* page 469; *United States* v. *Nice, supra,* page 598. No such Act applicable to the Indians of the Reno Colony has been found. On the contrary, attention is invited to the Act of June 18, 1934, quoted in part in Appendix A, *infra,* pp. 39–42, as expressing the purpose of Congress to continue its guardianship of the Indian, to postpone indefinitely the Indian's emancipation therefrom, and to lead him gradually into the customs and developments of civilized life.

Accordingly, the practice, previously ~~promoted~~ PERMITTED, of allotting Indian lands in severalty is terminated; periods of trust and restriction on alienation are continued "until otherwise directed by Congress"; and money is appropriated to be used by the Secretary of the Interior to acquire interests in lands, water rights, etc., "within or without existing reservations," for the purpose of providing land for Indians. Title to such lands or rights is to be taken in the name of the United States in trust "for the Indian tribe or individual Indian" for whom the land is acquired, and such lands or rights shall be exempt from State and local taxation.

It is further provided that a tribe or tribes residing on the same reservation may organize for its common welfare, and may adopt a constitution and by-laws. A constitution and by-laws have been adopted by the Reno Indian Colony, also known as the Reno-Sparks Indian Colony, the colony here under consideration, and were approved by the Secretary of the Interior January 15, 1936.

As used in that Act, the term "Indian" includes all persons of Indian descent who were then members of a recognized tribe under Federal jurisdiction, certain descendants of such members, and "all other persons of one-half or more Indian blood;" and the term "tribe" covers any Indian tribe, organized band, or pueblo, or "the Indians residing on one reservation."

B. THE RENO INDIAN COLONY AND SIMILAR INDIAN COLONIES HAVE ALWAYS BEEN ADMINISTRATIVELY CONSIDERED AS INDIAN COUNTRY

The Bureau of Indian Affairs has always regarded the Reno and similar Indian colonies as Indian country. Any doubt as to the propriety of this interpretation should be resolved in favor thereof, unless clearly arbitrary. It has long been settled that where ambiguity or uncertainty exists in a statute great weight will be given by this Court to the contemporaneous construction by the Department officials who have been called upon to act under the statute and to carry its provisions into effect. *National Lead Co.* v. *United States,* 252 U. S. 140, 145; *United States* v. *Hill,* 120 U. S. 169, 182; *Brown* v. *United States,* 113 U. S. 568, 571; see also *United States* v. *Nice, supra,* 601; *United States* v. *Sandoval, supra.*

As indicating the construction placed upon the applicable statutes by the Department of the Interior, there are attached to this brief as Appendix B excerpts from two letters from that Department dated, respectively, April 15 and November 6, 1937, with a copy of a letter of inquiry of October 27, 1937, from the Department of Justice to the Interior Department, from which it appears that the Interior Department (a) considers the lands involved as in effect an Indian reservation; (b) regards the Indians in the Reno Colony as wards of the Nation and in need of its protection

against the introduction of intoxicating liquors; and (c) advises that, if it be held that the Federal liquor laws do not fully apply to the land in this colony, the effective use of this reservation for the purpose for which it is maintained will be seriously impaired.

The Department also states that such colonies of homeless Indians in California are generally termed "rancherias" and in New Mexico "pueblos." In the final paragraph of its letter of November 6 it advises that "This colony [the Reno Indian Colony] does not differ from an ordinary reservation in any material respects except that on most reservations the lands were subject to allotment in severalty," and then calls attention to the fact that, since the approval of the Act of June 18, 1934, *infra,* p. 39, such allotment is unlawful, with the result that no material distinction exists at the present time.

In the *Sandoval* case, *supra,* where the legislative and executive departments had long treated the lands of the Pueblos as Indian country and dependent communities entitled to the protection of the liquor laws, this Court (p. 47) said:

> As before indicated, by an uniform course of action beginning as early as 1854 and continued up to the present time, the legislative and executive branches of the Government have regarded and treated the Pueblos of New Mexico as dependent communities entitled to its aid and protection, like other Indian tribes, and, considering their Indian

> lineage, isolated and communal life, primitive customs, and limited civilization, this assertion of guardianship over them cannot be said to be arbitrary but must be regarded as both authorized and controlling.

In this case the Government's care of its Indian wards has extended not only to providing an area in which to live but also to furnishing them farming implements and providing for their education and civilization. Cf. *United States* v. *Sandoval, supra,* pp. 39–41; *United States* v. *Nice, supra,* p. 559.

C. ANALYSIS OF DECISIONS RELIED UPON BY DISTRICT COURT

In the trial court's decision in this case it is said (p. 455):

> Tracts of land acquired and set apart for a particular purpose of Indian welfare are not a reservation, or otherwise to be regarded as Indian country in the sense that expression is used in the statute. *Surplus Trading Co.* v. *Cook,* 281 U. S. 647, 50 S. Ct. 455, 74 L. Ed. 1091; *United States* v. *Wurtzbarger* (D. C.) 276 F. 753; *United States* v. *Myers* (C. C. A.) 206 F. 387; *Benson* v. *United States* (C. C.) 44 F. 178.

Only the *Myers* case appears to support the proposition advanced by the trial court. In that case it was held that lands which had been Indian country, but had lost such status by cession to the United States, did not again become Indian country by being set apart by order of the Interior De-

partment for the purposes of an Indian school. So far as appears, the attention of the court was not drawn to the opinion in the *Donnelly* case, *supra*, decided by this Court 26 days previously. In any event the proposition relied upon by the District Court is without relevance in the instant case because the lands in the Reno Indian Colony were not set apart for a "particular purpose," but for homes and cultivation and general living purposes.

The other decisions cited by the District Court clearly have no application to the case at bar. The *Surplus Trading Co.* case did not involve the question as to what lands might constitute Indian country. In the *Wurtzbarger* case, a case wherein land had been acquired by the Government for an Indian school, it was decided that the State had consented to the purchase by the Government, thus transferring to the Government exclusive jurisdiction. *Benson* v. *United States*, 44 Fed. 178, decided by the Circuit Court for the Northern District of New York on November 12, 1890, held that the village of Salamanca, New York, was not Indian country within the meaning of the statutes here under consideration. The court, relying upon the decision of this Court in *Ex parte Crow Dog, supra*, declared that "no territory with [in] the boundary of the states, although it was Indian country in 1834, is Indian country under the Revised Statutes, unless it is excluded by treaty or statute from state jurisdiction." This case was decided prior to the *Don-*

nelly and other later decisions which have given a more expansive definition to the term "Indian country" in the light of changing conditions.

II

AS THE RENO INDIAN COLONY IS INDIAN COUNTRY, THERE IS NO BASIS FOR THE VIEW THAT THE INDIAN LIQUOR LAWS HAVE NO APPLICATION TO THAT COLONY BECAUSE THE LANDS THEREIN WERE ACQUIRED BY THE GOVERNMENT WITHOUT THE CONSENT OF THE STATE LEGISLATURE

A basic error in the reasoning of the Circuit Court of Appeals was its assumption that the Indian liquor laws can have no application to the Reno Indian Colony because the Government acquired the lands in that colony without the consent of the State legislature. The confusion in the court's reasoning is in its view that the application of the laws depends upon the exclusive-legislation clause in the Constitution (Article I, Section 8, Clause 17). As is apparent from the quotation from the *Sandoval* case, *supra* (p. 20), the power of Congress to enact the Indian liquor laws arises from the constitutional provision authorizing it to regulate commerce with the Indian tribes (Article I, Section 8, Clause 3), and also from the power and duty of the Government to exercise a fostering care and protection over all dependent Indian communities within its borders.

Within the scope of its enumerated powers, the authority of the Federal Government is, of course, supreme. This includes its power to regulate traffic

and intercourse with the Indians. As stated by this Court in *Joplin Mercantile Co.* v. *United States,* 236 U. S. 531, 545:

> The authority of Congress to preserve in force existing laws or enact new ones after statehood with reference to traffic or intercourse with the Indians, including the liquor traffic, was well established; the power of Congress over such commerce being plenary, and independent of state boundaries. *United States* v. *Holliday,* 3 Wall. 407, 418; *United States* v. *Forty-Three Gallons of Whiskey,* 93 U. S. 188, 195, 197; *S. C.,* 108 U. S. 491; *United States* v. *Kagama,* 118 U. S. 375, 383; *Dick* v. *United States,* 208 U. S. 340, 353; *Hallowell* v. *United States,* 221 U. S. 317, 323; *Ex parte Webb,* 225 U. S. 663, 683; *United States* v. *Wright,* 229 U. S. 226, 237; *Perrin* v. *United States,* 232 U. S. 478, 483; *Johnson* v. *Gearlds,* 234 U. S. 422, 438.

This power arises from the third, and not the seventeenth, clause of Section 8, Article I, of the Constitution. Generally it has not been the purpose of Congress to obtain and exercise exclusive jurisdiction over lands set apart for the Indians—the jurisdiction provided by the seventeenth clause—but only such authority and jurisdiction as is necessary to the discharge of its duty to the Indians. In all other respects, the authority of the State over such lands remains complete and undiminished. *Surplus Trading Co.* v. *Cook,* 281 U. S. 647, 651.

Hence, this Court has held that the murder of a white man by a white man within the Ute Indian reservation in Colorado was not within the jurisdiction of the Federal court (*United States* v. *McBratney*, 104 U. S. 621), and that the same was true as to the murder of a Negro by a Negro on the Crow Indian reservation in Montana (*Draper* v. *United States*, 164 U. S. 240). Both of these decisions were cited with approval in *Donnelly* v. *United States*, *supra*, page 271.

The statutes of Nevada relating to the acquisition of exclusive territorial jurisdiction by the United States read as follows (Nevada Compiled Laws, 1929):

> SECTION 2895. The consent of the State of Nevada is hereby given, in accordance with the seventeenth clause, eighth section of the first article of the constitution of the United to the acquisition by the United States, by purchase condemnation or otherwise, of any land in this state which has been, or may hereafter be, acquired for sites for customhouses, courthouses, post offices, arsenals, or other public buildings whatever, or for any other purpose of the government.
>
> SECTION 2896. The exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States for all purposes, except the service upon such sites of all civil and criminal process of the courts of this state, but the jurisdiction so ceded shall continue no longer than the said United States shall own said lands; *provided*, that

> an accurate description and plat of such lands so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the governor of this state.

If the Federal Government desired exclusive jurisdiction over the Reno Indian Colony, it need only file the description and plat called for by the proviso to Section 2896, quoted *supra*. But, as stated, the Congress has not indicated a desire for exclusive jurisdiction. This, however, in no way diminishes its power to regulate commerce with the Indian tribes, which power the Government relies upon in this case.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.[2]

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BRIEN MCMAHON,
Assistant Attorney General.
WILLIAM W. BARRON,
Special Assistant to the Attorney General.
WILLIAM H. RAMSEY,
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Attorneys.

DECEMBER 1937.

[2] As the claimants were not represented in the Circuit Court of Appeals, and are not represented in this Court, the Government has printed their brief in the District Court as Appendix C, *infra*, p. 54.

APPENDIX A

The following sections of Title 25, U. S. C., deal with the introduction, etc., of intoxicating liquor into the Indian country:

SEC. 241. *Intoxicating liquors; sale to Indians or introducing into Indian country.*—No ardent spirits, ale, beer, wine, or intoxicating liquor or liqours of whatever kind shall be introduced, under any pretense, into the Indian country. Every person who sells, exchanges, gives, barters, or disposes of any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind to any Indian under charge of any Indian superintendent or agent, or introduces or attempts to introduce any ardent spirits, ale, wine, beer, or intoxicating liquor of any kind into the Indian country shall be punished by imprisonment for not more than two years, and by fine of not more than $300 for each offense.

Any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous, or vinous liquor including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian a ward of the Government under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and any person who shall introduce or attempt to introduce any malt,

spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, shall be punished by imprisonment for not less than sixty days, and by a fine of not less than $100 for the first offense and not less than $200 for each offense thereafter: *Provided, however,* That the person convicted shall be committed until fine and costs are paid. But it shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the War Department or any officer duly authorized thereunto by the War Department. (R. S. 2139; Feb. 27, 1877, c. 69, § 1, 19 Stat. 244; July 23, 1892, c. 234, 27 Stat. 260; Jan. 30, 1897, c. 109, 1, 29 Stat. 506.)

SEC. 244. *Possession of intoxicating liquors in Indian country.* Possession by a person of intoxicating liquors in the Indian country or where the introduction is or was prohibited by treaty or Federal statute shall be an offense and punished in accordance with the provisions of section 241 of this title. (May 25, 1918, c. 86, § 1, 40 Stat. 563; June 30, 1919, c. 4, § 1, 41 Stat. 4.)

SEC. 246. *Searches and seizures.*—If any superintendent of Indian affairs, Indian agent, or subagent, or commanding officer of a military post, has reason to suspect or is informed that any white person or Indian is about to introduce or has introduced any spirituous liquor or wine into the Indian country in violation of law, such superintendent, agent, subagent, or commanding officer, may cause the boats, stores, packages, wagons, sleds, and places of deposit of such

person to be searched; and if any such liquor is found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages, and peltries of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and the other half to the use of the United States; and if such person be a trader, his license shall be revoked and his bond put in suit. It shall moreover be the duty of any person in the service of the United States, or of any Indian, to take and destroy any ardent spirits or wine found in the Indian country, except such as may be introduced therein by the War Department. In all cases arising under this section and section 241, Indians shall be competent witnesses (R. S. § 2140).

SEC. 247. *Vehicles subject to seizure whether used by owner or other persons.*—Automobiles or any other vehicles or conveyances used in introducing, or attempting to introduce, intoxicants into the Indian country, or where the introduction is prohibited by treaty or Federal statute, whether used by the owner thereof or other person, shall be subject to the seizure, libel, and forfeiture provided in section 246 of this title (Mar. 2, 1917, c. 146, § 1, 39 Stat. 970).

SEC. 24, par. 9 of the Judicial Code (U. S. C., Title 28, Sec. 41 (9)) provides:

The district courts shall have original jurisdiction as follows:

* * * * *

Of all suits and proceedings for the enforcement of penalties and forfeitures incurred under any law of the United States (36 Stat. L., 1092).

Judicial Code, Sec. 256, par. 2 (U. S. C., Title 28, Sec. 371), provides:

> The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States.
>
> * * * * *
>
> Of all suits for penalties and forfeitures incurred under the laws of the United States.

The following excerpts are taken from the Act of June 18, 1934, c. 576, 48 Stat. 984, "An Act to conserve and develop Indian land and resources; to extend to Indians the right to form business and other organizations;" etc.

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That hereafter no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.
>
> SEC. 2. The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are hereby extended and continued until otherwise directed by Congress.
>
> SEC. 3. The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however,* That valid rights or claims of any persons to any lands so withdrawn existing on the

date of the withdrawal shall not be affected by this Act: *Provided further,* That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation * * *.

SEC. 5. The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year. * * *

Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation. * * *

SEC. 7. The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: *Provided,* That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations. * * *

SEC. 9. There is hereby authorized to be appropriated, out of any funds in the Treas-

ury not otherwise appropriated, such sums as may be necessary, but not to exceed $250,000 in any fiscal year, to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations or other organizations created under this Act.

SEC. 10. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $10,000,000 to be established as a revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established. A report shall be made annually to Congress of transactions under this authorization. * * *

SEC. 16. Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same

voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress. * * *

SEC. 19. The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. * * * The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.

APPENDIX B

Correspondence Between the Attorney General of the United States and the Secretary of the Interior

United States Department
of the Interior,
Office of the Secretary.
Washington, April 15, 1937.

The Honorable The Attorney General.

My Dear Mr. Attorney General: Reference is made to your letter of March 24, in re *United States* v. *One Chevrolet Automobile, No. 2658; United States* v. *One Chevrolet Sedan, No. 2660.* (*United States* v. *Pete McGowan, Claimant of one Chevrolet Coupe, et al.*) You enclosed copy of the opinion of the Circuit Court of Appeals for the Ninth Circuit in the above entitled cases affirming the decision of the United States District Court for the District of Nevada that the Reno Indian Colony is not an Indian Reservation or Indian Country within the meaning of the special Indian liquor laws.[1]

* * * * *

The Circuit Court of Appeals in its opinion states that the determining factor in this case is whether the Reno Indian Colony is "Indian Coun-

[1] The omission here relates to the opinion of the Attorney General as to the prospect of success in this litigation. Other indicated omissions in this Appendix are made because the matter therein has been set out elsewhere in this brief.

try." As stated in the opinion, the land was purchased by the United States, twenty acres March 8, 1917, for the sum of $6,000, being paid in equal parts from two items in the Interior Department Appropriation Act for the fiscal year 1917 (39 Stat. 123, 143), reading as follows:

* * * * *

For the reasons hereinafter stated, however, it does not appear that it is necessary that the state have relinquished its jurisdiction over the lands involved, as the United States is not claiming exclusive jurisdiction over such lands.

The United States having acquired and set aside these sites as a home for its dependent wards, such lands became in effect an Indian reservation. It is not essential to the creation of an Indian reservation that there be a formal cession or a formal act setting apart a particular tract, but such a reservation is in fact created if from what has been done a certain specified tract is held exclusively for Indian occupation. See *Minnesota* v. *Hitchcock,* 185 U. S. 373–390. An Indian reservation is Indian country. *Pronovost* v. *United States,* 232 U. S. 487, and it is immaterial in this respect that the reservation may have been created from lands not previously occupied by the Indians. *Donnelly* v. *United States,* 228 U. S. 243.

Attention is invited to *United States* v. *Sandoval,* 231 U. S. 28, involving the question as to whether the Indian liquor laws applied to the Pueblos and whether the lands were Indian country. The court in this case said:

* * * * *

The authorization by Congress of funds for the purchase of the lands now involved also carried

with it an appropriation for the support and civilization of the Indians for whom the land was purchased. These Indians are, therefore, wards of the Federal Government and in need of all the protection which the Government can throw around them. One of the protections that the Government affords its Indian wards is that against the introduction of intoxicating liquor. If, therefore, the Federal Liquor Laws do not fully apply to the lands purchased the "effective use of the reservation for the purpose for which it is maintained," will be very seriously impaired.

This case is of great importance to the Indians as there are approximately 613,000 acres of purchased lands in sixteen different states which may be materially affected by this decision.

It is recommended, therefore, that application be made for a writ of certiorari.

Sincerely yours,

(Signed) OSCAR L. CHAPMAN,
Assistant Secretary.

BM: WHR: tc
23-46-68

OCTOBER 27, 1937.

THE HONORABLE THE SECRETARY OF THE INTERIOR.
(Attention Commissioner of Indian Affairs.)

SIR: I have the honor to invite attention further to the cases of *United States* v. *One Chevrolet Automobile* and *United States* v. *One Chevrolet Sedan*, decided adversely to the contentions of the Government in the Circuit Court of Appeals for the Ninth Circuit.

As you are aware, a writ of certiorari has been granted by the Supreme Court, and this Depart-

ment is now engaged in preparation of the Government's brief. For use in such preparation, and perhaps in the argument of the case, I have the honor to request certain additional information not found in the transcript of record, that is, a narrative response to the following inquiries:

1. Why were these Indian colonies called by that name instead of calling them reservations? See the Opinion of the District Court, 16 Fed. Sup. 453, 455.

2. As to the land purchased from the appropriations made in 1917, by whose order was such land designated for this purpose? I would appreciate receiving a copy of such order.

3. Are the non-reservation Indians and the Washoe Tribe amalgamated and living together as a tribe, or otherwise intermingled, or are they occupying separate parts of the colony? Has the colony a form of tribal government? If not, how is it governed?

4. In what respects, if any, does this colony differ from an ordinary reservation?

5. Has the land in the colony been brought, or will it be brought under the Act of February 8, 1887, and subsequent legislation providing for the allotment of Indian lands in severalty? Are there, or will there be, any trust or restricted allotments?

An immediate response to this letter will be appreciated.

Respectfully,

BRIEN MCMAHON,
Assistant Attorney General,
For the Attorney General.

UNITED STATES DEPARTMENT
OF THE INTERIOR,
OFFICE OF THE SECRETARY.
Washington, November 6, 1937.

The Honorable THE ATTORNEY GENERAL.

MY DEAR MR. ATTORNEY GENERAL: Reference is made to your letter of October 27, inviting attention to the cases of *United States* v. *One Chevrolet Automobile* and *United States* v. *One Chevrolet Sedan,* decided adversely to the contentions of the Government in the Circuit Court of Appeals for the Ninth Circuit.

You set out five queries to which you ask a narrative response. The legislation, providing for the purchase of the lands under consideration contained in the Act of May 18, 1916 (39 Stat., 123–143), provides as follows:

* * * * *

On January 13, 1916, there was referred to this Department for report an amendment intended to be proposed by Senator Pittman to the pending Indian appropriation bill asking for $100,000 for the purpose of procuring home sites with adequate water rights and providing agricultural instruction for the non-reservation Indians of the State of Nevada. On February 8, 1916, the Secretary of the Interior submitted a report (copy enclosed) in which he said in part:

> The Commissioner of Indian Affairs had advised me that out of the total number of 5,240 Indians in the State of Nevada, approximately 3,100 have no land or reserva-

tion rights; that they are scattered throughout the State and need the assistance of the Government to start them towards self-support. I believe that if possible something should be done to assist these homeless Indians and think that an experiment might well be made along the lines of this bill. A similar object has been accomplished to a considerable extent in the appropriation to purchase land for homeless Indians in California.

I suggest that the proposed amendment be modified to read as follows:

"For the purpose of procuring home and farm sites, with adequate water rights, and providing agricultural equipment and instruction and other necessary supplies for the nonreservation Indians in the State of Nevada, $15,000."

The item of $10,000 for the purchase of land and water rights of the Washoe Indians, together with $5,000 for their support and civilization, was contained in the annual estimates for the fiscal year, 1917. The justification for this item before the sub-committee of the Committee on Indian Affairs reads as follows:

In justification for this item it may be said that it has been reported that there are about 600 Washoe Indians in Ormsby and Douglas Counties who make a precarious livelihood working at odd jobs, supplementing the little money they are able to earn for subsistence by gathering nuts and by fishing. Some of these Indians are said to be in a deplorable condition, and no doubt the older ones are quite helpless, and probably not well cared for. This matter was thoroughly discussed by the Senate Committee on Indian Affairs

of the Sixty-third Congress, third session, and the item was agreed to. Senator Pittman, who presented the item, among other things said:

"These Indians have been at peace with the whites from the beginning. In the days when they had the Piute wars the Washoes sided with the whites and aided and assisted them. The result has been that the Piute Indians in that State are bitter against the Washoes. The Piutes have received the assistance and protection of the Government, but the Washoe Indians have never received any assistance or protection whatever. They are the best Indians in our State. They are a splendid, high-class type of Indian. A number of years ago they were granted a little tract of land in the Carson Valley. That land, however, was on the shelf, as we term it in that country. It was not in the valley proper. It was on the slide rock which comes down from the mountains, and so it was impossible for agricultural purposes. The Indians were unable there to do anything. These Indians live just from hand to mouth. They will pitch a little bit of a tent around the edge of a town or mining camp. The women will try to get washing and the men will try to get a job chopping some wood, but it is a very precarious living they earn at the outside. They have no reservation to live on, and no protection whatever, and it is an outrage. The people of the State are very much interested in that, and have for a long time been trying to do something for them. It is useless to go and appropriate for some public lands unless you can acquire water rights for them. The water rights in that state have been appropriated, or have been set aside for the Government

> projects, which places it beyond the reach of the Indian. Those who take the most interest in Indian affairs in our State think the best thing to do is to purchase a tract of real agricultural land, say, 100 acres, close to Carson City, with a water right, where these Indians can raise garden stuff and chickens and have a home and a market for their produce."

Our records do not disclose why the areas acquired for these Indians were called colonies instead of reservations. It might be stated in this connection that colonies or settlements of homeless Indians in California were generally termed "rancherias," and in New Mexico, "pueblos." It was not the practice, therefore, to term all lands purchased for Indians reservations.

There is enclosed for your information Indian Office recommendation that it be authorized to accept deed covering lands purchased under authority of the Act of May 18, 1916, supra, and Departmental approval thereof under date of April 13, 1917. There is also enclosed for your information an excerpt from the narrative report for the year 1918 by L. A. Dorrington, then Special Agent in Charge of the Reno Indian Agency, Nevada, in which he advises as to the manner in which the land was being utilized for the Washoes and Paiutes and assigned to their use. It will be noticed that the Special Agent referred to the individual "allotments" of the Indians. The word "allotment" used by the Special Agent was intended to convey the same meaning as assignment, since the lands purchased for these Indians were never allotted in severalty. Instead the Indian was given an assignment or a right to use and improve the particular tract designated for him.

The Indians of the Reno Sparks Colony have organized under the provisions of the Act of June 18, 1934 (48 Stat. 984). Two copies of the constitution and by-laws of these Indians are enclosed. This colony does not differ from an ordinary reservation in any material respects except that on most reservations the lands were subject to allotment in severalty. In this connection, however, attention is invited to Section 1 of the Act of June 18, 1934, supra, which provides "That hereafter no land in any reservation created or set apart by treaty or agreement with the Indians, Act of Congress, Executive Order, purchased or otherwise, shall be allotted in severalty to any Indian."

Sincerely yours,

(Signed) OSCAR L. CHAPMAN,
Assistant Secretary.

Enclosure 823717.

NARRATIVE

ANNUAL REPORT RENO INDIAN AGENCY

1918

INDIAN COLONIES

At the commencement of the year we were engaged in organizing the Reno-Sparks Indian Colony, for which land had been purchased just outside of the city limits of Reno. The Colony site was surveyed and divided into plots about the size of an ordinary city residence lot, a main street and alleys laid out, and space between the Paiute and Washoe Sections reserved for administrative purposes. The Indians from Sparks, from the University Camp near Reno, and from the smaller

scattering camps south and west of the city were then assigned lots. As many of them are old and more or less helpless and some were in destitute circumstances, it was necessary to assist them in moving; also to give them some aid in reerecting their crude habitations. Several of the younger Indians, however, on being assured of the permanency of the colony, purchased lumber and building material themselves and erected some fairly substantial houses. Little could be done during the winter in improving their individual allotments, but early this spring the more progressive began to prepare their ground and at this time several have gardens which compare favorably with any in the vicinity of the colony. Several new huts have been built and other improvements made, as their limited means would permit.

These colonies tend to develop the Indian's pride and self-esteem and to install in him a desire to improve his conditions. He is now permanently settled and has no fear of being summarily ejected from his home at the will or caprice of the land owners. He is assured, when he tills and cultivates his land, that he, personally, will benefit from the results of his labor. There is an incentive for him to save money in order to purchase necessaries and conveniences, which in the past, because of his unsettled condition, he did not deem advisable. This all tends toward progress. One Indian in particular, a cripple, with a wooden leg, but otherwise strong and husky, has set an example which cannot but have a salutary effect. In the past he has borne a rather unsavory reputation and was well acquainted with the city police. Early this spring,

he appeared at the office and asked that a plot of ground be assigned to him in the Indian village. His request was granted and a limited amount of garden seeds were furnished him, upon his promising to make use of them. Today, he has, without exception, the best garden in the village, of which he is justly proud. He announces himself as a "working man" and the possession of a home has aroused his pride and ambition. He has become energetic and industrious and a leader for better conditions in the village. Although his reformation is far from being complete in so short a time, yet there is such a marked improvement that it is very noticeable and gratifying. The Indians are well pleased with their new environment and their better instincts are being aroused, which could never have been accomplished under the deplorable conditions in which they lived in the past.

At Yerington, where ten acres were purchased for the Indians, a moving bee was organized by Special Supervisor L. D. Creel and the local Field Matron. The Indians, young and old, all assisted in the work of moving their little houses onto the village site. A building line was established on either side of the street and the houses arranged to conform thereto. A flag pole was erected and a flag donated to the colony. The village is attracting considerable attention and the people of Yerington have expressed their appreciation and admiration of the change which has been accomplished.

APPENDIX C

Brief of Defendants in the District Court of the United States for the District of Nevada

In the District Court of the United States of America in and for the District of Nevada. *United States of America, Plaintiff,* vs. *One Chevrolet Automobile, Defendant,* No. 2658. *United States of America, Plaintiff,* vs. *One Chevrolet Sedan, Defendant,* No. 2660

DEFENDANT'S REPLY BRIEF

It having been duly stipulated between the parties hereto in open court as to all facts alleged in the complaint, save and except as to the jurisdiction of the court over the subject matter, and as to whether the lands embraced in the so-called "Reno Indian Colony" are lands known under the statute as "Indian Country," especially as mentioned in, and being lands referred to, and being the basis of, jurisdiction in Sections 246 and 247, Title 25, U. S. C. A.

Section 246, Title 25, U. S. C. A. reads as follows (Statute omitted):

Section 247, Title 25, U. S. C. A., reads as follows (Statute omitted):

> The first question therefore arising is: What are Indian lands?
>
> "An Indian Reservation is a part of a public domain set apart by proper authority for the use and occupation of a tribe or tribes of Indians." *In re Forty-three Cases of Cognac Brandy,* 14 Fed. 539.

"A particular portion of the public domain upon which an Indian tribe has been suffered long to remain, while other portions have been opened to settlement, or set apart particularly for Indian occupation does not constitute such tract as Indian reservation." *Supra.*

"Indian Country" as defined by the act of 1834 is "territory to which the Indian title has not been extinguished." *Supra.*

This term (Indian Country) was first used in the trade and intercourse acts in the act of July 22, 1790 (1 St. at Large, 137) where it was undefined. It was used again without definition in the second trade and intercourse act enacted March 1, 1793 (1 St. at Large, 329). It was first defined in the third intercourse act (1 St. at Large, 469), to be the country west of an irregular line extending from the present city of Cleveland, Ohio, to the River, St. Mary, Florida, (the boundary then fixed by various treaties with the several tribes and the government) and this line was subject to variance, as subsequent treaties might vary the boundaries between the various tribes and the United States. This act having expired, it was re-enacted with the same definition March 3, 1797 (St. at Large, 743), and again reenacted on its expiration April 30, 1802 (2 St. at Large, 139). Under this definition "territory purchased by the United States of the Indians, but frequented and inhabited exclusively by Indian tribes," is not Indian Country (*American Fur Co.* v. *U. S.* 2 Pet. 368). This definition continued to June 30, 1834, when Section 1 of the intercourse act, then enacted (4 St. at Large, 729) defined it to be "all that part of the United States west of the Mississippi and not within the states of Missouri and Louisiana, or the ter-

ritory of Arkansas, and also that part of the United States east of the Mississippi river and not within any State to which the Indian title has not been extinguished." *Under this definition the country described ceases to be Indian Country as soon as the Indians part with their title, and without any further act of Congress. Bates v. Clark,* 95 U. S. 208.

The principal case reported. *Forty-three Gallons of Cognac Brandy,* 11 Fed. Rep. 47; *U. S.* v. *Leathers* 6 Sawy. 17; "And that it is not extended, proprio vigore, over after acquired territory." *U. S.* v. *Joseph,* 94 U. S. 617.

"It seems from the principal case that since the enactment of the Revised Statutes there is no Indian country, though an Indian Reservation may be and is held to be all the Indian Country there is." In Forty-three Cases Cognac Brandy, 44 Fed. 540.

"The setting apart of a limited tract of the public domain for a school which the government devotes mainly, or even entirely to the education and training of Indian children attending in their individual capacity does not operate to convert that tract into Indian country." *U. S.* v. *Myers,* 206 Fed. 387.

"Irrespective of the act of 1875, such villages cannot be considered 'Indian Country' within the meaning of Section 2139, as the act of Congress of June 30, 1834, which was a revision of former acts regulating trade with Indian Tribes, and which contained the provision now embodied in Section 2139, in describing what lands should be deemed 'Indian Country' for the purposes of the act, included only lands outside the territorial limits of any state then existing, and, by providing that 'the general laws of the United States as to the punishment of crimes

committed in any place within the sole and exclusive jurisdiction of the United States * * * shall extend to the Indian country,' showed that by such country was meant territory 'within the sole and exclusive jurisdiction of the United States,' " *Benson* v. *United States,* 44 Fed. Rep. 178.

In connection with the above it is understood that the former Section 2139 has the same wording as Section 241 of the present statute and treats of acts in "Indian Country."

In *Bates* v. *Clark,* [95] U. S. 204, the Supreme Court interpreted the meaning of the term in the Revised Statutes by recourse to the definition of the act of 1834; and the Court held that all the country embraced in the description of the act of 1834 remains Indian country, within the meaning of the Revised Statutes, so long as the Indians retain their original title to the soil, *and ceases to be Indian Country whenever they lose that title, in the absence of any different provision by treaty or act of Congress.* Supra.

In *Ex Parte, Crow Dog,* 109 U. S. 556, 3 Supt. Ct. Rep. 396, the question again arose as to what country, being Indian Country under the Act of 1834, was still Indian Country under the Revised Statutes; and the court decided that the term, as used in the Revised Statutes, applied to all country to which the Indian title has not been extinguished within the limits of the United States, even when not within a reservation expressly set apart for the exclusive occupancy of Indians, *except that within the boundaries of states, and that it embraces all territory within the boundary of states actually occupied by Indians and excluded by statute or treaty from state jurisdiction.*

According to the opinion in that case, no territory within the boundary of the States, although it was Indian country in 1834, is Indian country under the Revised Statutes, *unless it is excluded by treaty or statute from state jurisdiction.* (*Bensen* v. *U. S.*, 44 Fed. Rep. 182).

"In the absence of provisions to the contrary, the lands embraced within a state occupied by Indian tribes are a part of the state or territory and subject to its jurisdiction." *Waggoner* v. *Evans,* 170 U. S. 588.

"It (Indian Reservation) may be set apart by an Act of Congress, by treaty, or by executive order." *Gibson* v. *Anderson,* 131 Fed. 39.

"It cannot be established by custom or prescription." *In re Forty-three Cases Cognac Brandy,* 14 Fed. 539.

"The Indian title to land is *extinguished* when the United States has made a grant of the title and right of possession, either expressly or as the necessary result of the statute, so that the jurisdiction of the state is complete." *Townsend* v. *U. S.,* 265 Fed. 519.

"Land ceases to be Indian Country as soon as the Indians part with their title, without any further action by Congress." *U. S.* v. *Payne,* 8 Fed. 883.

"Under the constitutional provision as to the power of Congress over places purchased by the consent of the legislature of a state for the erection of needful buildings, the United States has jurisdiction of criminal offenses committed on the site of an Indian school to the purchase of which by *the government the legislature of the state has assented by joint resolution.*" *U. S.* v. *Wurtzberger,* 276 Fed. 753.

"Where lands have ceased to be Indian country, by extinguishment of the Indian

title, no special officer of the Indian service, no Indian Superintendent, agent or subagent, or his deputy has authority without a search warrant, or other process, to search lands, or the stores, houses, or other improvements thereon owned or occupied by citizens of the United States for intoxicating liquors." *Evans* v. *Victor,* 204 Fed. 361.

EXTINGUISHMENT OF TITLE

It is conceded by the libelant that the only title the United States can claim to the lands of the so-called Reno Indian Colony is that held under the deeds granted by Ione Gould Lewis and John A. Lewis, her husband, dated March 8, 1917, and the deed of Lorens M. Christensen and Marie Christensen, his wife, dated January 22, 1927, and the title of the United States to the lands can only run from the date of the deeds.

It is obvious that if the United States had title to the lands as "Indian Lands" there would have been no necessity for the government to purchase the lands.

ORGANIC LAW OF NEVADA

Paragraph 2 of the Enabling Act passed by Congress (NCL 1929, P 1) sets forth the boundary of the State of Nevada, which does not contain any reservation as to "Indian Country."

ACTS OF CONGRESS

Libelant stipulates that there has been no Act of Congress relating or appertaining to the lands herein save and except two items contained in the Interior Department Act for the fiscal year 1917

(Act of May 18, 1916; H. R. 10385; Public, No. 80, 39 Statutes at Large 123, 143) entitled:

> An act making appropriation for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes for the fiscal year ending June thirtieth, nineteen hundred and seventeen. 2 (39 Statutes at large, Page 123),

and particularly designating those portions referring to the State of Nevada as follows:

> For the purpose of procuring home and farm sites, with adequate water rights, and providing agricultural equipment and instruction and other necessary supplies for the *non-reservation* Indians in the State of Nevada * * *.
>
> For the purchase of land and water rights for the Washoe Tribe of Indians, the title of which is to be held in the United States for the benefit of said Indians * * *.

It will be noted that this land was procured for "non-reservation" Indians and nowhere in the Act is it shown that the lands purchased were to be held as a "reservation" or as "Indian lands."

On May 10, 1926, a supplemental act of Congress (Senate 1989; Public, 207): 44 Statutes at Large, Page 496, was adopted:

> An act to authorize the Secretary of the Interior to purchase certain land in Nevada to be added to the present site of the Reno Indian Colony, and authorizing the appropriation of funds therefor.
>
> * * * That the said land when purchased shall be added to and become a part of the site for the Reno Indian colony heretofore purchased by the government.

This simply enlarging the territory of the Reno Indian Colony and in no manner making a claim as a "Reservation" of "Indian Lands."

CONGRESSIONAL LIMITATIONS

> It has been determined that Congress cannot be suffered to grant Indian Country by a law general in its terms; specific language having no room for doubt as to the legislative will. *Leavenworth R. Co.* v. *U. S.* (92 U. S. 733; 14 R. C. L., p. 21).

STATE CONTROL OF LANDS

Paragraph 127, Constitution of the United States, reads:

> To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be for the erection of Forts, Magazines, and Arsenals, dock-yards, and other needful buildings.

On January 18, 1883, an act was duly approved and became the law of Nevada; Statutes 1912, Revised Laws of Nevada.

> SECTION 1949. That the jurisdiction of this State is hereby ceded to the United States of America, over all such pieces or parcels of land within the limits of this state as have been or shall hereafter be selected and acquired for the purpose of erecting post offices, custom houses or other structures ex-

clusively owned by the general government and used for its purposes; *provided that an accurate description and plat of such lands so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the Governor of this state* * * *.

On February 24, 1885, an act was approved making certain exceptions to the act of 1883.

SECTION 1951. The jurisdiction of this state is hereby ceded to the United States of America over all pieces or parcels of land within the limits of this state that may be selected or acquired by the United States for the purpose of erecting thereon a public building or public building for the accommodation of the United States Courts, the post office and other government offices; * * *.

On February 24, 1921, the acts of 1883 and 1885, above set forth as Sections 1949 and 1951 of the Revised Statutes of Nevada, 1912, were duly repealed, and another act adopted, being Sections 2895 and 2896, Vol. 2, Nevada Compiled Laws, 1929.

SECTION 2895. The consent of the State of Nevada is hereby given in accordance with the seventeenth clause, eighth section of the first Article of the Constitution of the United States to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this state which has been, or may hereafter be, acquired for sites for custom houses, post offices, arsenals, or other public building whatever, or for any other purpose of the government.

SECTION 2896. The exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is

hereby ceded to the United States for all purposes, except the service upon such sites of all civil and criminal process of the courts of this state, but the jurisdiction so ceded shall continue no longer than the United States shall own said lands; *provided, that an accurate description and plat of such lands so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the governor of this state.*

The libelant has conceded and stipulated that no special act of the Legislature of the State of Nevada was ever adopted granting to the United States the lands of the so-called Reno Indian Colony.

The date of the first purchase of land by the United States for the Reno Indian Colony was on March 8, 1917, at which time the Nevada Act of 1883 and 1885 were in force.

Libelant stipulates that no plat as required in the act of 1883 or the subsequent act of February 21, 1921 (Sec. 2895–2896, Vol. 2, N. C. L.) was ever filed with the Governor of the State of Nevada.

The government was bound under the act of 1883 to file such a plat to acquire complete jurisdiction over the lands claimed.

The exception to the act as passed in 1885 gave exception only to particular purposes of "erecting thereon a public library or public buildings for the accommodation of the United States Courts, the post office, and other government offices" and not for the purpose of "Procuring home and farm sites, with adequate water rights."

The United States in purchasing lands does not become a preferred owner in any manner except perhaps in the matter of taxation. Until the

United States takes advantage of laws passed in its favor by the several states its right to the government and control of the lands is only that of an individual owner.

> It is not unusual for the United States to own within a State lands which are set apart and used for public purposes. Such ownership without more do not withdraw the lands from the jurisdiction of the State. On the contrary, the lands remain part of her territory and within the operation of her laws, save that the latter cannot affect the title of the United States or embarrass it in using the lands or interfere with its right of disposal.
>
> Another illustration is found in two classes of military reservations within a State—one where the reservation, although established before the State is admitted into the Union, is not excepted from her jurisdiction at the time of her admission; and the other where the reservation, although established after the admission of the State, is established either upon lands set apart by the United States from its public domain or upon lands purchased by it for the purpose without the consent of the legislature of the State. In either case, unless there be a later and affirmative cession of jurisdiction by the State, the reservation is a part of her territory and within the field of operation of her laws, save that they can have no operation which would impair the effective use of the reservation for the purposes for which it is maintained. *Surplus Trading Co.* v. *Cook*, 281 U. S. 647.
>
> Lands may, however, be set apart for a purpose, affecting Indians, without becoming Indian Country. *U. S.* v. *Meyers*, 206 Fed. 387.

Reverting to the Act of 1834, defining "Indian Country," and the first Act of its kind passed by Congress, the Court will take judicial notice that at that time, and in 1836, when Arkansas was admitted as a state, the whole of the United States consisted of twenty-five states, with only Missouri, Arkansas, and Louisiana being situated west of the Mississippi River. It will be remembered that the Intercourse Act (4 St. at Large 729) defined Indian Country as "all that part of the United States west of the Mississippi and not within the states of Missouri and Louisiana, or the territory of Arkansas, and also that part of the United States east of the Mississippi river and not within any state to which the Indian title has been extinguished."

The whole country west of these states, and comprising chiefly California, New Mexico, Arizona, Utah, Nevada, and portions of Colorado and Wyoming, was a single territory, which from the time of early Spanish explorations up until Mexico revolted from Spain in 1822, was a Spanish possession. From 1822 until the treaty of Guadalupe-Hidalgo of February 2, 1848, this country was owned by Mexico, and thus, in 1848, fourteen years after Congress had defined Indian Country, territory involved in this case was acquired by the United States from Mexico, by purchase for the sum of Fifteen Million Dollars, pursuant to the provisions of the treaty.

Two things, and perhaps others, might well be argued from these facts, namely: That for years before this country was acquired by the United States, it, as is shown by its purchase from Mexico, recognized this land as belonging to nations

other than the Indians, and secondly: Congress never had in mind, when it defined Indian country, and of this land which we had recognized as belonging to another Sovereign Power, hence, when it spoke of Indian Country, it had in mind territory on the eastern boundary, to the east of, and to the immediate west of the Mississippi River, and this country, later acquired from Mexico by purchase, never was "Indian Country" so far as Congress is concerned.

CONCLUSIONS

It is the contention of the defendants that the United States District Court is without jurisdiction in the matter, as the Reno Indian Colony is not an Indian Reservation or Indian land, within the meaning of the statutes, and is but an Indian village for non-reservation Indians, over which the Federal government has not retained civil and criminal control by reason of non-compliance with Federal and State statutes.

As the Reno Indian Colony is within the State of Nevada and subject to the laws of the said state, Sections 246 and 247 of the United States statutes do not apply, and the search and seizure by the Federal officers was without legal right and any and all action taken by them was without the law and should be declared null and void and due restitution made to the defendants herein.

Respectfully submitted.

GEO. A. MONTROSE,
GEO. L. VARGAS,
Attorneys for respective defendants.

I hereby certify the within to be a full, true, and complete copy of the original filed herein.

GEO. A. MONTROSE.

U. S. GOVERNMENT PRINTING OFFICE: 1937

SUPREME COURT OF THE UNITED STATES.

No. 138.—October Term, 1937.

United States of America, Petitioner, *vs.* Pete McGowan, Claimant of One Chevrolet Coupe, etc., et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[January 3, 1938.]

Mr. Justice Black delivered the opinion of the Court.

The Court of Appeals affirmed a decree of the District Court dismissing libel proceedings brought by the United States praying forfeiture of two automobiles used to carry intoxicants into the Reno (Nevada) Indian Colony.[1] The proceedings were instituted under Title 25, U. S. C. Sec. 247 which provides in part:[2]

"Automobiles or any other vehicles or conveyances used in introducing, or attempting to introduce, intoxicants into the Indian country, or where the introduction is prohibited by treaty or Federal statute, whether used by the owner thereof or other person, shall be subject to . . . seizure, libel, and forfeiture . . . ."

Both courts below concluded that the Reno Indian Colony is not "Indian country" within the meaning of this statute.

The only question for determination is whether this colony is such Indian country. In this inquiry, both the legislative history of the term "Indian country" and the traditional policy of the United States in regulating the sale of intoxicants to Indians are important.

The Reno Indian Colony is composed of several hundred Indians residing on a tract of 28.38 acres of land owned by the United States and purchased out of funds appropriated by Congress in 1917[3] and in 1926[4]. The purpose of Congress in creating this

[1] Certiorari granted, — U. S. —.

[2] 39 Stat. 970.

[3] 39 Stat. 123, 143.

[4] 44 Stat. 496. The Act of 1917, under authority of which 20 acres of land were bought, contained items reading as follows:

"For the purpose of procuring home and farm sites, with adequate water rights, and providing agricultural equipment and instruction and other neces-

colony was to provide lands for needy Indians scattered over the State of Nevada, and to equip and supervise these Indians in establishing a permanent settlement.[5]

The words "Indian country" have appeared in the statutes relating to Indians for more than a century.[6] We must consider "the changes which have taken place in our situation, with a view of determining from time to time what must be regarded as Indian country where it is spoken of in the statutes."[7] Also, due regard must be given to the fact that from an early period of our history, the government has prescribed severe penalties to enforce laws regulating the sale of liquor on lands occupied by Indians under government supervision. Indians of the Reno Colony have been established in homes under the supervision and guardianship of the United States. The policy of Congress, uniformly enforced through the decisions of this Court, has been to regulate the liquor traffic with Indians occupying such a settlement.[8] This protection is extended by the United States "over all *dependent Indian communities within its borders*, whether within its original territory or ter-

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sary supplies for the non-reservation Indians in the State of Nevada, $15,000 . . ."

"For the purchase of land and water rights for the Washoe Tribe of Indians, the title to which is to be held in the United States for the benefit of said Indians, $10,000, to be immediately available; for the support and civilization of said Indians, $5,000; in all, $15,000."

On recommendation of the Secretary of the Interior the 1926 additional appropriation was made and 8.38 acres were added to the Colony to take care of additional worthy Indian families who were anxious to establish homes in the Colony. See, House Report No. 795, 69th Congress, 1st Session.

[5] Hearings on the 1917 act disclosed the following statement by the Senator sponsoring the appropriation:

"These Indians live just from hand to mouth. . . . They have no reservation to live on, and no protection whatever and it is an outrage. . . . It is useless to go and appropriate for some public lands unless you can acquire water rights for them. . . . Those who take the most interest in Indian affairs in our State (Nevada) think the best thing to do is to purchase a tract of real agricultural land, say, one hundred acres, close to Carson City, with a water right, where these Indians can raise garden stuff and chickens and have a home and a market for their produce." Hearings, Comm. on Indian Affairs U. S. Senate, on H. R. 20150, Vol. 1, p. 226 (1915).

[6] See, Act of June 30, 1834, 4th Stat. 729, c. 161.

[7] Ex parte Crow Dog, 109 U. S. 556, 561; Clairmont *v.* United States, 225 U. S. 551, 557.

[8] The House Committee Report on the 1917 appropriation reads in part: "The active and wholesome policy of the present commissioner in preventing the sale of intoxicating liquors to *the Indians* and in using their surplus or tribal funds in the purchasing of live stock to put on their reservations has been a very long step in the right direction." House Report, Volume 1, 64th Congress, 1st Session, Report No. 87, page 2.

ritory subsequently acquired, and *whether within or without the limits of a state.*"[9]

The fundamental consideration of both Congress and the Department of the Interior in establishing this colony has been the protection of a dependent people.[10] Indians in this colony have been afforded the same protection by the government as that given Indians in other settlements known as "reservations." Congress alone has the right to determine the manner in which this country's guardianship over the Indians shall be carried out,[11] and it is immaterial whether Congress designates a settlement as a "reservation" or "colony." In the case of *United States* v. *Pelican*, 232 U. S. 442, 449, this Court said:

"In the present case the original reservation was Indian country simply because *it had been validly set apart for the use of the Indians as such, under the superintendence of the government.*"

The Reno Colony has been validly set apart for the use of the Indians. It is under the superintendence of the government. The government retains title to the lands which it permits the Indians to occupy. The government has authority to enact regulations and protective laws respecting this territory.[12] " . . . Congress possesses the broad power of legislating for the protection of the Indians wherever they may be within the territory of the United States . . ." *United States* v. *Ramsey*, 271 U. S. 471.

When we view the facts of this case in the light of the relationship which has long existed between the government and the Indians—and which continues to date[13]—it is not reasonably possible to draw any distinction between this Indian "colony" and "Indian country." We conclude that Section 247 of Title 25, *supra*, does apply to the Reno Colony.

2. The Federal prohibition against taking intoxicants into this Indian colony does not deprive the State of Nevada of its sovereignty over the area in question. The Federal Government does not assert exclusive jurisdiction within the colony. Enactments of the Federal Government passed to protect and guard its Indian

[9] United States *v.* Sandoval, 231 U. S. 28, 46.

[10] Cf. United States *v.* Pelican, 232 U. S. 442, 450.

[11] United States *v.* Sandoval, *supra.*

[12] Hallowell *v.* United States, 221 U. S. 317; Constitution, Art. IV, Sec. 3, Cl. 2.

[13] Cf. Act of June 18, 1934, c. 576, 48 Stat. 984.

wards only affect the operation, within the colony, of such state laws as conflict with the Federal enactments.[14]

Under the findings made by the District Court in this cause, a decree of forfeiture should have been rendered against the automobiles involved. The judgment of the Court of Appeals is reversed and the cause is remanded to the District Court for action to be taken in accordance with this opinion.

Reversed.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[14] See, Hallowell *v.* United States, *supra;* Surplus Trading Co. *v.* Cook, 281 U. S. 647.